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12
13 **UNITED STATES DISTRICT COURT FOR THE**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 L.C., a minor by and through her
16 guardian *ad litem* Maria Cadena,
17 individually and as successor-in-interest
18 to Hector Puga; I.H., a minor by and
19 through his guardian *ad litem* Jasmine
20 Hernandez, individually and as
21 successor-in-interest to Hector Puga;
22 A.L., a minor by and through her
23 guardian *ad litem* Lydia Lopez,
24 individually and as successor-in-interest
25 to Hector Puga; and ANTONIA SALAS
26 UBALDO, individually;

27
28 Plaintiffs,
vs.

STATE OF CALIFORNIA; COUNTY
OF SAN BERNARDINO; S.S.C., a
nominal defendant; ISAIAH KEE;
MICHAEL BLACKWOOD;
BERNARDO RUBALCAVA; ROBERT
VACCARI; JAKE ADAMS; and DOES
6-10, inclusive,

Defendants.

Case No. 5:22-cv-00949-KK-SHK

Honorable Kenly Kiya Kato

**PLAINTIFFS' MEMORANDUM OF
CONTENTIONS OF FACT AND
LAW**

FPTC: May 15, 2025

TIME: 10:30 a.m.

CTRM: 3

TRIAL: June 2, 2025

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1 **PLAINTIFFS' MEMORANDUM OF CONTENTIONS OF FACT AND LAW**

2 **I. SUMMARY OF FACTUAL CONTENTIONS**

3 On February 16, 2021, CHP Sergeant Isaiah Kee received information from
4 dispatch regarding a freeway shooting on the 15 Northbound Freeway between
5 Palmdale and Roy Rogers. He received information that someone driving a white
6 Expedition with 22" black rims, with the word "funeral" on a sticker in the left rear
7 corner of the back window had fired one shot at a black Honda Civic as a result of a
8 roadway dispute. The driver of the black Honda Civic had taken a picture of the
9 white Expedition but was unable to obtain the white Expedition's license plate.
10 After an investigation at the scene, Sergeant Kee returned to the office where he
11 briefed two graveyard-shift officers, Officer Michael Blackwood and Officer
12 Bernardo Rubalcava, about the earlier freeway shooting. He authorized the officers
13 to perform a felony stop on the white Expedition if they came across the vehicle
14 during their patrol.

15 At approximately 1:45 a.m. on February 17, 2021, Officer Blackwood and
16 Officer Rubalcava were traveling west on Bear Valley and entering the freeway
17 when they observed a white Expedition that matched the description of the vehicle
18 involved in the earlier freeway shooting. The officers turn their vehicle around to
19 follow the white Expedition and observe the Expedition self-yield before the
20 officers have a chance to turn on their lights or sirens. Officer Blackwood started
21 giving the occupant(s) of the white Expedition to roll down their windows and turn
22 off the car and observed the driver of the vehicle put his hands out the window,
23 wave, and take off. The officers pursued the vehicle. Sergeant Kee was contacted by
24 dispatch during that time, informing him that a unit had the vehicle stopped near
25 Bear Valley. As Sergeant Kee headed out, he was informed that a pursuit had
26 started. Sergeant Kee requested an air unit and requested that the San Bernardino
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1 Sheriff's Department (SBSD) take over the pursuit. He then responded towards the
2 pursuit.

3 Sergeant Robert Vaccari was the first from SBSD to join the pursuit. As
4 Sergeant Vaccari broadcasted the directions, more of SBSD deputies joined the
5 pursuit. During the pursuit, Sergeant Vaccari made a request for an air unit as well.
6 Sergeant Vaccari characterized the Expedition's speeds as "fast," "but not
7 outrageous." At some point during the pursuit, SBSD deployed spike strips,
8 deflating the right front tire of the Expedition. As the tire disintegrated, the vehicle
9 slowly came to a stop on Peach Avenue, south of Catalpa Street. Officer Blackwood
10 positioned his patrol vehicle off to the left of the driver's side of the expedition
11 while Sergeant Kee positioned his patrol vehicle off to the right. Sergeant Vaccari
12 and Deputy Adams positioned their vehicles behind the CHP vehicles.

13 The officers exited their vehicles. Sergeant Kee exited his vehicle with his
14 AR-15 and positioned himself on the driver's side of Officer Blackwood's patrol
15 vehicle and started giving the occupants of the Expedition commands. At that point,
16 the officers realized that there were two people inside the Expedition. It appeared to
17 the officers that the driver was refusing to exit the Expedition, and at that point, the
18 officers believed that the driver was still armed and dangerous.

19 Sergeant Kee decided to deploy the beanbag shotgun to break open the
20 Expedition's window, but was unsuccessful. After the deployment, the passenger of
21 the Expedition, a female, exited the vehicle and complied with the officers'
22 commands to put her hands up and walk backward towards the officers, allowing the
23 officers to handcuff her and take her into custody. The female informed the officers
24 that the driver's name was Hector, later identified as the decedent, Hector Puga.

25 Officer Kee continued to communicate with Mr. Puga, requesting that he exit
26 the vehicle. During this period of fifteen to twenty minutes of negotiation, the SBSD
27 air unit that was circling above with its spotlight informed the officers that it had to
28 leave to refuel. Also during this time, Sergeant Kee asked Sergeant Vaccari to

1 request for SBSD SWAT to respond to the scene. According to Sergeant Kee,
2 Sergeant Vaccari responded that he wasn't sure SWAT would respond but that he
3 would check, and Sergeant Kee observed Sergeant Vaccari go back to his vehicle
4 and get on a cell phone. However, according to Sergeant Vaccari, he had forgotten
5 his cell phone at the station, and because he was new to the station, did not know the
6 number for SWAT. Instead, he decided on his own, without communicating with the
7 other officers, that they should try to further negotiate with Mr. Puga before
8 attempting to call SWAT.

9 Sergeant Kee then requested that Sergeant Vaccari break open the
10 Expedition's back window, which he did so with less-lethal glass breaker rounds.
11 Sergeant Vaccari then gave Mr. Puga commands to get out of the vehicle, which Mr.
12 Puga refused. Mr. Puga then requested that the officers call his "wife." It should be
13 noted that at the time of his death, Mr. Puga was not married. Mr. Puga gave the
14 officers a phone number to call. The officers tried the number, but no one picked up
15 on the other end. Mr. Puga then requested that the officers call his family but was
16 unable to provide phone numbers for his family. At that point, Sergeant Vaccari
17 then deployed pepper ball rounds into the Expedition.

18 The officers testified that Sergeant Vaccari fired a volley of pepper balls into
19 the Expedition approximately every five minutes, for about 45 minutes, for a total of
20 75 to 100 pepper balls. During this time, Sergeant Vaccari considered contacting
21 dispatch to contact SWAT but ultimately decided to continue deploying pepper balls
22 despite Mr. Puga still refusing to get out of the vehicle.

23 At one point, Sergeant Vaccari decided that he would try to intentionally
24 strike Mr. Puga with a pepper ball in order to motivate him to exit the vehicle.
25 Several witnesses testified that they heard Mr. Puga exclaim, "My eye," after
26 Sergeant Vaccari's last volley of pepper ball deployment. Officer Blackwood stated
27 that after hearing Mr. Puga say, "My eye," he observed blood around Mr. Puga's
28 eye area and believed that a pepper ball had hit his eye. He later testified that he

1 observed a cut above Mr. Puga's eye that he associated with him being hit by pepper
2 balls. Mr. Puga then requested medical attention and agreed to exit the vehicle.
3 Before he exited the vehicle, several witnesses testified that they heard Mr. Puga
4 express concern that he was going to be shot if he exited the vehicle.

5 As Mr. Puga slowly exited the Expedition, several witnesses, including
6 officers and percipient witnesses, observed Mr. Puga rubbing his eyes and tending to
7 his eyes. This action was also captured on video by a bystander's cell phone. Mr.
8 Puga was shirtless and wearing long pants as he exited the vehicles. The officers
9 testified that Mr. Puga exited the vehicle without showing his front side to the
10 officers, leading the officers to believe that Mr. Puga was attempting to conceal a
11 weapon in the front of his waistband. However, a bystander captured Mr. Puga's
12 exit out of the Expedition on video and the video does not show any object in the
13 front of Mr. Puga's waistband as he exited the vehicle.

14 Mr. Puga's exit from the vehicle and the subsequent shooting was captured on
15 video, from multiple angles, by the CHP unit's dashcam and bystander cell phone
16 videos. As Mr. Puga exited the vehicle he raised his hands in the air, over his head,
17 showing his empty hands. Sergeant Kee can be heard giving Mr. Puga commands as
18 he exited the vehicle. He occasionally dropped his hands to pull up his pants or to
19 wipe his face but would then put his hands up again. After Mr. Puga closed the door
20 to the Expedition, he walked to the front of the Expedition. Mr. Puga told Sergeant
21 Kee that he heard a click and believed that the officers were going to shoot him.

22 Mr. Puga stood in front of the Expedition with his hands up. He complied
23 with Sergeant Kee's commands to keep his hands up and subsequent commands to
24 put his hands on his head, but did not comply with Sergeant Kee's commands to
25 come towards Sergeant Kee. Mr. Puga stood in front of the Expedition for a few
26 minutes, alternating between putting his hands up above his head and placing his
27 hands on his head or using them to pull up his pants. Deputy Adams later testified
28 that he also observed Mr. Puga reaching down several times and thought it looked

1 like Mr. Puga was adjusting his pants, pulling up his pants, or reaching into his
2 pockets.

3 During this time, Sergeant Kee and Officer Rubalcava decided to approach
4 from the driver's side of the Expedition to take Mr. Puga into custody. At around the
5 same time, Sergeant Vaccari and Deputy Adams decided to approach from the
6 passenger's side of the Expedition to take Mr. Puga into custody. The CHP officers
7 and the SBSD deputies did not communicate with each other regarding a plan or
8 their intention to approach before they did so. The CHP officers were not aware that
9 the SBSD deputies were approaching Mr. Puga on the other side of the Expedition.

10 As the officers approached Mr. Puga, Mr. Puga dropped his hands and started
11 to run. Sergeant Kee testified that he shot at Mr. Puga as soon as he saw Mr. Puga
12 drop his right hand, and that he believes he was the first one to shoot. Officer
13 Rubalcava and Officer Blackwood discharged their firearms almost immediately
14 after Sergeant Kee started shooting. Deputy Adams testified that he did not shoot
15 while Mr. Puga was at the front of the vehicle and only started shooting after Mr.
16 Puga had started to run away.

17 While Mr. Puga ran, his hands were visible as they moved back and forth in a
18 running motion. Videos that captured the incident do not show Mr. Puga ever
19 looking back or turning towards the officers while he was running, nor does it show
20 Mr. Puga ever pointing his hand or object back towards the officers while he is
21 running. After running a few feet, Mr. Puga fell to the ground as a result of being
22 struck by the officers' gunshots. Videos capturing the incident show that numerous
23 shots were fired at Mr. Puga after he had fallen to the ground, with his head directed
24 away from the officers' direction. Plaintiffs' video expert did an analysis of the
25 audio peaks of the videos that captured the shooting and estimated that a total of
26 fifteen shots were fired after Mr. Puga fell to the ground. Sergeant Kee and Deputy
27 Adams testified that after Mr. Puga fell to the ground, he was no longer an
28 immediate threat of death or serious bodily injury.

1 After the shooting, the officers approached Mr. Puga to take him into custody.
2 Deputy Adams testified that he observed Mr. Puga still breathing and that he had
3 fallen on his hands in a prone position. Deputy Adams and Sergeant Vaccari gave
4 Mr. Puga commands but there was no compliance. Sergeant Vaccari then deployed
5 his Taser at Mr. Puga's back. It appeared to Sergeant Vaccari that the Taser made
6 contact as he could see Mr. Puga tensing up. Sergeant Vaccari then deployed the
7 Taser a second time. In his initial interview, Sergeant Vaccari conceded that he did
8 not consider handcuffing Mr. Puga while he was under the power of the Taser, and
9 that that would have been a much better option than deploying the Taser a second
10 time. After the second Taser deployment, Mr. Puga was handcuffed and taken into
11 custody.

12 The officers claim that after the officers turned Mr. Puga over onto his back,
13 they observed a gun underneath Mr. Puga. The scene was processed after the
14 incident and revealed that there were no bullet impacts or casings found near the
15 area of the initial shooting that would support the allegation that Mr. Puga fired a
16 weapon at anyone while he was at the front of the SUV or while he was running.

17 The residents of 17994 Catalpa Street, Hesperia, California were struck by
18 gunfire as a result of the officers' use of lethal force. The family of four, consisting
19 of Jonathan Wayne Botten, Sr., Tanja Dudek-Botten, Annabell Botten, and J.B.,
20 were inside their house, intermittently watching the police activity outside. Plaintiff
21 J.B., a minor male at the time, sustained serious gunshot wounds to the chest that
22 required surgery and hospitalization. Plaintiff Jonathan Wayne Botten, Sr. sustained
23 gunshot wounds to the right arm, left hand, and right arm. Plaintiff Tanja Dudek-
24 Botten sustained gunshot wounds to her chest, chin, face, and right arm. Ms. Botten
25 also metal shrapnel in her eye that required removal.

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1 **II. CONTENTIONS OF LAW**

2 **A. Claim 2: Fourth Amendment—Excessive Force**

3 This survival claim, brought by Plaintiffs L.C., I.H., and A.L, contends that
4 Defendants Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, Jake Adams, and
5 Robert Vaccari used excessive force against Hector Puga in violation of his Fourth
6 Amendment rights and 42 U.S.C. § 1983. Plaintiffs seek survival damages and
7 attorneys' fees under this claim.

8 Elements:

9 1. Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, Jake Adams,
10 and/or Robert Vaccari acted under color of law;

11 2. Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, Jake Adams,
12 and/or Robert Vaccari used excessive force against Hector Puga;

13 3. The excessive force caused injury, damage, loss, or harm to Hector
14 Puga.

15 *See* Ninth Circuit Manual of Model Jury Civil Instructions, No. 9.25.

16 Key Evidence: (1) testimonies of plaintiffs; (2) testimonies of lay witnesses;
17 (3) testimonies of plaintiffs' expert witnesses; (4) videos capturing the incident; (5)
18 photographs of the incident scene; (5) forensic evidence, including autopsy report
19 and related photos and evidence found at the scene; (6) testimonies of defendants;
20 and (7) photographs of plaintiffs and the decedent.

21 **B. Claim 4: Fourteenth Amendment—Interference with Familial
22 Relationship**

23 This wrongful death claim, brought by all Plaintiffs, contend that Defendants
24 Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, and Jake Adams violated
25 Plaintiffs' rights from governmental interference with their relationship with their
26 father and son, Hector Puga, under the Fourteenth Amendment and 42 U.S.C. §
27 1983 when they shot and killed Hector Puga. Official conduct "shocks the
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1 conscience" where an officer acts with a purpose to harm unrelated to a legitimate
2 law enforcement objective or, if actual deliberation is practical, where the officer
3 acts with deliberate indifference. Plaintiffs seek wrongful death damages and
4 attorneys' fees under this claim.

5 Elements:

- 6 1. Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, and/or Jake
7 Adams acted under color of state law;
- 8 2. Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, and/or Jake
9 Adams unlawfully interfered with Plaintiff's and Mr. Puga's
10 parent/child relationship.

11 *See* Ninth Circuit Manual of Model Civil Jury Instructions, No. 9.32;
12 *Wilkinson v. Torres*, 610 F.3d 546, 554 (9th Cir. 2010); *Porter v. Osborn*,
13 546 F.3d 1131, 1137 (9th Cir. 2008).

14 Key Evidence: (1) testimonies of plaintiffs; (2) testimonies of lay witnesses;
15 (3) testimonies of plaintiffs' expert witnesses; (4) videos capturing the incident; (5)
16 photographs of the incident scene; (5) forensic evidence, including autopsy report
17 and related photos and evidence found at the scene; (6) testimonies of defendants;
18 and (7) photographs of plaintiffs and the decedent.

19 **C. Claim 5: Battery (Survival and Wrongful Death)**

20 Plaintiffs L.C., I.H., and A.L. bring this claim individually and as Hector Puga
21 successors-in-interest against Defendants Isaiah Kee, Bernardo Rubalcava, Michael
22 Blackwood, Jake Adams, Robert Vaccari, the State of California, and the County of
23 San Bernardino. Plaintiff seeks survival damages for Mr. Puga's pre-death pain and
24 suffering, loss of life, and loss of enjoyment of life. *See* Cal. Code Civ. Proc.

25 § 377.34. Plaintiff also seeks wrongful death damages for the loss of Mr. Puga's
26 love, companionship, comfort, care, assistance, protection, affection, society, and
27 moral support. *See* Cal. Code Civ. Proc. § 377.60. Plaintiffs also seek punitive
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1 damages. The State of California is vicariously liable for the conduct of Isaiah Kee,
2 Bernardo Rubalcava, and Michael Blackwood, and the County of San Bernardino is
3 vicariously liable for the conduct of Jake Adams and Robert Vaccari. *See* Cal. Gov.
4 Code § 815.2(a).

- 5 1. Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, Jake Adams, and/or
6 Robert Vaccari used unreasonable force against Mr. Puga;
- 7 2. Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, Jake Adams, and/or
8 Robert Vaccari's use of unreasonable force was a cause of injury or death to
9 Mr. Puga.

10 *See* CACI 1305A, 1305B (2024 edition).

11 Key Evidence: (1) testimonies of plaintiffs; (2) testimonies of lay witnesses; (3)
12 testimonies of plaintiffs' expert witnesses; (4) videos capturing the incident; (5)
13 photographs of the incident scene; (5) forensic evidence, including autopsy report
14 and related photos and evidence found at the scene; (6) testimonies of defendants;
15 and (7) photographs of plaintiffs and the decedent.

16 **D. Claim 6: Negligence (Survival and Wrongful Death)**

17 Plaintiffs L.C., I.H., and A.L. bring this claim individually and as Hector
18 Puga successors-in-interest against Defendants Isaiah Kee, Bernardo Rubalcava,
19 Michael Blackwood, Jake Adams, Robert Vaccari, the State of California and the
20 County of San Bernardino. Plaintiff seeks survival damages for Mr. Puga's pre-
21 death pain and suffering, loss of life, and loss of enjoyment of life. *See* Cal. Code
22 Civ. Proc. § 377.34. Plaintiff also seeks wrongful death damages for the loss of Mr.
23 Puga's love, companionship, comfort, care, assistance, protection, affection, society,
24 and moral support. *See* Cal. Code Civ. Proc. § 377.60. The State of California is
25 vicariously liable for the conduct of Isaiah Kee, Bernardo Rubalcava, and Michael
26 Blackwood, and the County of San Bernardino is vicariously liable for the conduct
27 of Jake Adams and Robert Vaccari. *See* Cal. Gov. Code § 815.2(a).

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- 1 1. Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, Jake Adams, and/or
2 Robert Vaccari were negligent;
- 3 2. The negligence of Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, Jake
4 Adams, and/or Robert Vaccari was a cause of injury or death to Mr. Puga.

5 *See CACI 401, 440, 441 (2024 edition).*

6 Key Evidence: (1) testimonies of plaintiffs; (2) testimonies of lay witnesses; (3)
7 testimonies of plaintiffs' expert witnesses; (4) videos capturing the incident; (5)
8 photographs of the incident scene; (5) forensic evidence, including autopsy report
9 and related photos and evidence found at the scene; (6) testimonies of defendants;
10 and (7) photographs of plaintiffs and the decedent.

11 **E. Claim 7: Violation of Cal. Civ. Code § 52.1 ("Bane Act")**

12 Plaintiffs L.C., I.H., and A.L. bring this claim against Defendants Isaiah Kee,
13 Bernardo Rubalcava, Michael Blackwood, Jake Adams, Robert Vaccari, the State of
14 California and the County of San Bernardino. Plaintiffs bring this claim as Hector
15 Puga's successors-in-interest and seek survival damages for Mr. Puga's pain and
16 suffering, loss of life, and loss of enjoyment of life, and punitive damages.

17 *Chaudhry v. City of Los Angeles*, 751 F.3d 1096 (9th Cir. 2014). The State of
18 California is vicariously liable for the conduct of Isaiah Kee, Bernardo Rubalcava,
19 and Michael Blackwood, and the County of San Bernardino is vicariously liable for
20 the conduct of Jake Adams and Robert Vaccari. *See* Cal. Gov. Code § 815.2(a).

- 21 1. Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, Jake Adams, and/or
22 Robert Vaccari used excessive force against Mr. Puga;
- 23 2. Isaiah Kee, Bernardo Rubalcava, Michael Blackwood, Jake Adams, and/or
24 Robert Vaccari intended to violate Mr. Puga's rights, demonstrated by
25 these Defendants acting with reckless disregard for Mr. Puga's right to be
26 free from excessive force;
- 27 3. The use of excessive force was a cause of injury, damage, harm, or death

1 to Mr. Puga.

2 See *Reese v. County of Sacramento*, 888 F.3d 1030, 1043 (9th Cir. 2018) (citing
3 *Cornell v. City and County of San Francisco*, 17 Cal. App. 5th 766, 801-802
4 (2017)).

5 Key Evidence: (1) testimonies of plaintiffs; (2) testimonies of lay witnesses;
6 (3) testimonies of plaintiffs' expert witnesses; (4) videos capturing the incident; (5)
7 photographs of the incident scene; (5) forensic evidence, including autopsy report
8 and related photos and evidence found at the scene; (6) testimonies of defendants;
9 and (7) photographs of plaintiffs and the decedent.

10 **III. ANTICIPATED EVIDENTIARY ISSUES**

11 Plaintiffs have filed the following motions *in limine*:

12 1. Plaintiffs' Motion *in Limine* No. 1 to Exclude Evidence of Decedent's
13 Criminal History, Prior Contacts with Law Enforcement, Periods of Incarceration,
14 Alleged Gang Affiliation, and Potential Charges and Sentencing Had Decedent
15 Survived;

16 2. Plaintiffs' Motion *in Limine* No. 2 to Exclude Evidence Regarding
17 Decedent's Alleged History of Drugs and Alcohol Use that was Unknown to the
18 Officers;

19 3. Plaintiffs' Motion *in Limine* No. 3 to Exclude Any Evidence That Was
20 Untimely Disclosed or Produced After the Fact Discovery Cutoff;

21 4. Plaintiffs' Motion *in Limine* No. 4 to Preclude Certain Opinions and
22 Testimony of Defendants' Police Practices Expert Greg Meyer and Ken Hubbs;

23 5. Plaintiffs' Motion *in Limine* No. 5 to Exclude Evidence of State of
24 California and County of San Bernardino's Findings That the Officers' Uses of
25 Force Was not Criminal, Was Reasonable, Justified, and/or Was Within Policy.

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1 **IV. ANTICIPATED ISSUES OF LAW**

2 The parties are in disagreement regarding the issue of causation as it relates to
3 Plaintiffs' federal Fourth and Fourteenth Amendment claims. The Ninth Circuit
4 Manual of Model Civil Jury Instructions does not include a model instruction for
5 causation. Instead, the Manual simply provides authority discussing "General
6 Principles" of causation. Defendants contend that in order for the jury to find the
7 officers liable under Plaintiffs' federal claim, the Plaintiffs must prove that the
8 officer(s)' use of force was the actual cause of Mr. Puga's injury or death and that
9 neither the concept of concurrent causation or alternative causation are applicable or
10 legally appropriate under Plaintiffs' federal claims. Plaintiffs contend that both
11 concurrent causation and alternative causation are appropriate and applicable with
12 regards to the issue of causation under Plaintiffs' federal claims. The Ninth Circuit
13 Manual's discussion regarding causation recognizes that

14 In *Jones v. Williams*, the Ninth Circuit affirmed a defense verdict in a §
15 1983 case in which the district court gave the following "concurrent
16 cause" instruction to address allegations of supervisory and group
17 liability: "[M]any factors or things or the conduct of two or more
18 persons can operate at the same time either independently or together
19 to cause injury or damage and in such case each may be a proximate
cause." *Jones v. Williams*, 297 F.3d 930, 937 n.6 (9th Cir. 2002).

20 Ninth Circuit Manual Model of Civil Jury Instructions, No. 9.2. Moreover, the fact
21 that the fatal bullet likely came from only one of the officers does not absolve all the
22 officers from liability if Plaintiffs are unable to show which officer fired which
23 bullet, and which officer(s) caused the gunshot wounds sustained by Decedent or the
24 fatal gunshot wound. In *Nelson v. City of Davis*, the district court found that even
25 though the plaintiff was unable to show which officer fired the pepper spray bullet
26 that hit the plaintiff, since excessive force liability may be predicated on an officer's
27 "integral participation" and every officer who participated in firing pepperball
28 launchers participated in a meaningful way, all officers may be held liable for the

1 plaintiff's injuries. *Nelson v. City of Davis*, 709 F. Supp. 2d 978, 987 (E.D. Cal.
2 2010), *aff'd*, 685 F.3d 867 (9th Cir. 2012). Similarly here, because all of the
3 shooting officers intentionally used lethal force and shot at Decedent, they may all
4 be held liable for Decedent's gunshot injuries and death.

5 **V. BIFURCATION**

6 Plaintiffs request that the issue of the amount of punitive damages to be
7 awarded, if any, be bifurcated from the remainder of the trial. At this time, Plaintiffs
8 do not request bifurcation of any other issues. However, subject to the Court's
9 rulings on Plaintiffs' pending Motions *in Limine*, Plaintiffs may request bifurcation
10 of liability and damages if the Court allows admission of certain prejudicial
11 evidence solely on the basis that such evidence is relevant only to damages.

12 **VI. JURY TRIAL**

13 The issues herein are triable to a jury as a matter of right. The parties made a
14 timely demand for trial by jury.

15 **VII. ATTORNEYS' FEES**

16 If Plaintiffs prevail at trial, they are entitled to attorneys' fees under 42 U.S.C.
17 § 1988, *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983), and under state law
18 pursuant to California Civil Code Section 1021, *et seq.*

19 **VIII. ABANDONMENT OF ISSUES**

20 Plaintiffs have voluntarily dismissed their Fourth Amendment—Detention and
21 Arrest claim, Fourth Amendment—Denial of Medical Care claim, and all Plaintiffs'
22 *Monell* claims for Unconstitutional Custom, Practice, or Policy, Ratification, and
23 Inadequate Training.

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1 DATED: April 24, 2025
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LAW OFFICES OF DALE K. GALIPO

4 By /s/ Hang D. Le
5 Dale K. Galipo
Hang D. Le
6 Attorneys for Plaintiffs
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Certificate of Compliance

The undersigned, counsel of record for Plaintiffs L.C., I.H., A.L., and Antonia Salas Ubaldo, certifies that this memorandum contains 4,050 words, which complies with the 7,000 word limit of L.R. 11-6.1.

DATED: April 24, 2025

LAW OFFICES OF DALE K. GALIPO

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